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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

WCS Wireless, LLC

Request for Waiver of Section 27.50(a)

DA 05-1662

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In the Matter of

Establishment of Rules and Policies for the
Digital Audio Radio Satellite Service in the
2310-2360 MHz Frequency Band

IB Docket No. 95-91

COMMENTS OF SIRIUS SATELLITE RADIO INC. AND XM RADIO INC.

Sirius Satellite Radio Inc. ("Sirius") and XM Radio Inc. ("XM") hereby jointly submit their comments in response to the Wireless Telecommunications Bureau's June 15, 2005, Public Notice seeking comment on the request of WCS Wireless, LLC ("WCSW") for waiver of Section 27.50(a) of the Commission's Rules, 47 C.F.R. § 27.50(a).¹ Sirius and XM do not oppose the requested waiver *provided that* the Commission treats the Wireless Communications Service ("WCS") and Satellite Digital Audio Radio Service ("SDARS") alike. Simply put, if the

¹ See *Wireless Telecomms. Bureau Seeks Comment on WCS Wireless, LLC Request for Waiver of Section 27.50(a)*, Public Notice, DA 05-1662 (June 15, 2005) ("Public Notice").

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Commission grants the waiver it should similarly clarify that permanent SDARS terrestrial repeater maximum power limits will be expressed in terms of average, and not peak, power.²

Section 27.50(a) restricts the power at which licensees in the 2.3 GHz WCS can operate to 2000 watts peak EIRP.³ In its waiver request, WCSW seeks to have that 2000 watt power limitation be based on *average*, rather than peak, power.⁴ As grounds for the requested waiver, WCS asserts that the peak power limitation is unduly restrictive, that it limits the coverage and capacity of WCS systems, and that there is no corresponding benefit associated with the use of peak power.⁵

Sirius and XM agree with these findings, and urge the Commission to recognize that they are equally true with respect to any terrestrial repeater power limit that might apply to SDARS as well.⁶ Indeed, from a technical standpoint, average power definition for SDARS would be preferred from both an operational and a verification measurement standpoint. The Commission “has been working to resolve the complex technical issues involved in adopting final rules to

² This action would be consistent with treatment of SDARS emissions to date. In all discussions between WCS and SDARS licensees relating to a permanent rule for terrestrial repeaters, the parties have discussed EIRP in terms of average, and not peak, power.

³ 47 C.F.R. § 27.50(a).

⁴ See *Public Notice* at 1.

⁵ See *Public Notice* at 1.

⁶ The Commission has recognized the need for SDARS complementary terrestrial repeaters to overcome the effects of satellite signal blockage and multipath interference. See *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5810 (¶138) (1997); *XM Radio Inc.; Request for Special Temporary Authority to Operate Additional Satellite Digital Audio Radio Service Terrestrial Repeater*; *Sirius Satellite Radio Inc.; Request to Modify Special Temporary Authority to Operate Satellite DARS Terrestrial Repeaters*, Order and Authorization, 19 FCC Rcd 18,140, 18,142 (¶ 6) (2004) (“*Terrestrial Repeaters Order*”).

authorize SDARS [terrestrial] repeaters," but has "not yet completed" such rulemaking.⁷ The Commission's Part 27 regulation of WCS has always been premised on a careful balance between the interests and treatment of WCS and SDARS,⁸ and the Commission's treatment of the two services should continue in parallel. Accordingly, if the Commission grants the waiver and bases Section 27.50(a)'s power limitations on average power, it should clarify that any permanent SDARS terrestrial repeater power restrictions that result from the terrestrial repeater rulemaking will likewise be based on average power. In sum, if the Commission treats SDARS equally, Sirius and XM do not object to the proposed waiver for WCS.

Respectfully submitted,

XM RADIO INC.

By: 

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By: 

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July 5, 2005

⁷ *Terrestrial Repeaters Order*, 19 FCC Rcd at 18,142 (¶ 7).

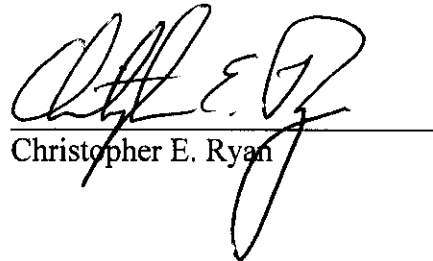
⁸ See, e.g., *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, Report and Order, 12 FCC Rcd 10,785, 10,855 (¶ 138) (1997) (adopting WCS out-of-band emission limits that "will allow both WCS and DARS to successfully operate," "encourag[ing] . . . WCS and DARS licensees to coordinate their operations to provide for greater or lesser protection on a mutually agreed basis," and "expect[ing] WCS and DARS licensees to cooperate fully to minimize the possibility of harmful interference from one service to the other"); *Terrestrial Repeaters Order*, 19 FCC Rcd at 18,143 (¶ 8) (further "encourage[ing] the [WCS and SDARS licensees] to continue to work together in the 'spirit of cooperation' that has been developed during these negotiations to reach a mutually acceptable resolution to potential interference problems").

CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant at Wiley Rein & Fielding LLP, hereby certify that on July 5, 2005, I caused copies of the foregoing **Comments of Sirius Satellite Radio Inc. and XM Radio Inc.** to be served by U.S. first class mail, postage pre-paid on the following parties:

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